

2004

# State of Utah v. Clifton Yazzie : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS  
FOR THE STATE OF UTAH

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STATE OF UTAH,  
Plaintiff,

v.

CLIFTON YAZZIE,  
Defendant.

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)  
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Case #20040285-CA

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BRIEF OF APPELLANT

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APPEAL FROM A FINAL ORDER OF THE SEVENTH JUDICIAL DISTRICT  
COURT, HONORABLE LYLE ANDERSON PRESIDING

-----oOo-----

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FILED  
UTAH APPELLATE COURTS  
SEP 13 2004

ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

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FOR THE STATE OF UTAH**

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**BRIEF OF APPELLANT**

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**JURISDICTION**

This is an appeal from the *Judgment and Order of Commitment to Utah State Prison*, dated March 30, 2004 (the "**Judgment**"), of the Seventh Judicial District Court involving criminal convictions for Driving Under the Influence of Alcohol with priors, a Third Degree Felony; No Insurance on Motor Vehicle, a Class B Misdemeanor; and Driving on Suspended or Revoked Operator's License, a Class C Misdemeanor. This Court has jurisdiction over this matter pursuant to UTAH CODE ANN. §78-2a-3 (2)(e).

**CONSTITUTIONAL AND STATUTORY PROVISIONS, STATEMENT OF ISSUES  
PRESENTED ON APPEAL, AND STANDARD OF REVIEW**

**Issue I:** *Did the trial court err in denying Appellant's motion to suppress by finding that Chief Halliday had a reasonable suspicion to stop Appellant?*

**Standard of Review:** The factual findings underlying the trial court's decision with respect to a motion to suppress the evidence are reviewed under the deferential "clearly erroneous" standard. State v. Pena, 869 P.2d 932, 939 n. 4 (Utah 1994) accord State v. Thurman, 846 P.2d 1256, 1272 (Utah 1993). Furthermore, the "determination of whether a specific set of facts gives rise to reasonable suspicion is a determination of law and is reviewable nondeferentially for correctness." Pena, at 939; Thurman, at 1272. "The reasonable-suspicion legal standard is one that conveys a measure of discretion to the trial judge when applying that standard to a given set of facts. Precisely how much discretion we cannot say...." Pena, at 939.

#### **DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS**

UNITED STATES CONSTITUTION, AMEND. IV

UTAH CONSTITUTION, ART. 1 § 14

#### **STATEMENT OF THE CASE**

On October 17, 2003, Clifton Yazzie (hereinafter "**Yazzie**") was charged by *Information* with Driving Under the Influence of Alcohol with priors, a Third Degree Felony; No Insurance on Motor Vehicle, a Class B Misdemeanor; and Driving

on Suspended or Revoked Operator's License, a Class C Misdemeanor. R001-R003. On December 15, 2003, the matter came for a preliminary hearing before Honorable Lyle R. Anderson of the Seventh Judicial District Court in and for San Juan County, State of Utah. R057. The trial court bound Yazzie over on all three charges. *Id.* at p. 16.

On February 12, 2004, Yazzie filed his *Motion to Suppress and Request for Hearing* (the "**Motion**") requesting that the trial court suppress the evidence taken or statements made subsequent to the illegal stop and illegal search of Yazzie's car (R018-R019). On February 17, 2004, the matter came for hearing on the Motion, at which time the trial court denied the Motion (R058). Based upon the denial of the Motion, Yazzie entered a conditional guilty plea to all three charges, specifically reserving the right to appeal the denial of the Motion under State v. Sery, 758 P.2d 935, 939 (Utah Ct.App.1988). *Id.* at pp. 31-34.

On March 29, 2004, Yazzie came for sentencing before the trial court (R059). On that date, the trial court ordered Yazzie to be imprisoned in the Utah State Prison for a term not to exceed five years, and in the San Juan County Jail for six (6) months and 90 days to be served concurrently with the



prison sentence. R059 at p. 7. On March 30, 2004, the trial court entered the Judgment. R046-R050.

On April 7, 2004, Yazzie filed his *Notice of Appeal* from the Judgment. On April 27, 2004, Yazzie filed his *Docketing Statement* challenging the trial court's denial of the Motion and questioning whether there was sufficient basis for Halliday to stop Yazzie and his vehicle.

#### **STATEMENT OF FACTS**

##### **A. Facts Available to Halliday Prior to the Seizure.**

Chief Halliday (hereinafter "**Halliday**") of the Blanding City Police Department has known Yazzie through law enforcement for more than twenty (20) years and has had several prior non-traffic, but alcohol-related encounters with Yazzie--i.e. public intoxication, disorderly conduct, etc. R058 at pp. 6, 8, 15. Although none of Halliday's prior encounters with Yazzie were traffic related, as typical procedure Halliday requested identification from Yazzie during more than ten (10) of these prior encounters. *Id.* at pp. 7 and 16. Halliday himself, however, does not recall if he has ever *specifically* requested a driver's license from Yazzie. *Id.* at p. 17. Halliday claims Yazzie never produced a

driver's license as identification during these encounters, even though he did have one. *Id.*

At the time of the incident at issue herein, Halliday had not had any type of encounter with Yazzie for more than one year and had never had a traffic incident involving Yazzie. R058 at pp. 15, 16. Halliday himself stated that he had no reason to believe that Yazzie had not obtained a driver's license since he had last seen him, and that he was not aware of any reason that would preclude Yazzie from doing so. *Id.* at p. 18.

The incident at issue in this appeal occurred on October 15, 2003, when Halliday observed Yazzie driving a vehicle. Halliday followed Yazzie for four (4) blocks before pulling him over and did not observe any traffic violations. R058 at p. 8. Because Halliday had never conducted an official inquiry into the matter, he mistakenly believed that Yazzie had never obtained a Utah driver's license (a) because Yazzie had never produced one during the prior non-traffic related encounters and (b) because he had never seen Yazzie driving. *Id.* at pp. 13, 15. Halliday stated that, upon seeing Yazzie driving, he would have "bet anything [Yazzie] had no license" and "would have gave odds." *Id.* at p. 7. Halliday also indicated that

he "would have given odds on the fact that [Yazzie] was drinkin'" although Yazzie did not commit any traffic violations observed by Halliday and there were no other indications that Yazzie had been drinking. *Id.* at pp. 8, 9. Upon observing Yazzie driving a vehicle, Halliday did not attempt to contact dispatch to affirm or dispel his mistaken belief because, in these circumstances where he believed a driver had no license, his standard practice was to stop a person and check rather than call dispatch. *Id.* at p. 13.

**B. Facts Occurring After the Seizure.**

During the incident at issue in this appeal, Halliday decided to pull Yazzie over after following Yazzie for approximately four (4) blocks, not because he had observed any traffic violations, but because he believed Yazzie was driving without a license. R058 at pp. 8, 12, 13. When Halliday approached Yazzie and requested his driver's license, Yazzie produced an Arizona driver's license, which turned out to be valid when checked through dispatch. *Id.* at pp. 8, 19; R057 at p. 7. Halliday was aware that Arizona was an interstate

driving compact state<sup>1</sup>, but he did not let Yazzie go after confirming the validity of the Arizona license. *Id.* at p. 19.

Halliday believed Yazzie was a resident of White Mesa<sup>2</sup>, because he had been to Yazzie's house, Yazzie had given that as his address in investigations, and Yazzie had never indicated to Halliday that he lived in another state. R058 at pp. 10, 11, 12. Halliday, however, did not inquire as to why Yazzie had an Arizona license, even though he was aware that some Native Americans live on both sides of the state line. *Id.* at p. 11, 20.

Halliday testified that he did not inquire as to why Yazzie had an Arizona license because Halliday detected alcohol on Yazzie and was more concerned with Yazzie's possible impairment. *Id.* at pp. 8, 20. Upon detecting alcohol, Halliday called Officer Mike Bradford ("**Bradford**") to assist. R057 at p. 6. On his way to assist and without any direction from Halliday, Bradford called dispatch again and

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<sup>1</sup> The Drivers' License Compact (the "**Compact**") is codified under UTAH CODE ANN. §53-3-604. Pursuant to Title 28, Chapter 6, Article 3 of the Arizona Revised Statutes, Arizona adopted the Compact, specifically codified at §28-1852.

<sup>2</sup> White Mesa is located in the four corners area within the boundaries of Utah.

had them check Yazzie for a driver's license in Utah and the four corner states. *Id.* at pp. 6-7, 9-10. Dispatch informed the officers that Yazzie had a suspended license in Utah. *Id.* at p. 8; R058 at p. 8.

Although as he approached he did not smell alcohol on Yazzie, on direction from Halliday, Bradford performed field sobriety tests on Yazzie and Yazzie did not pass them. R058 at p. 8; R057 at p. 7. Bradford then performed a breathalyzer and the result was .222. R058 at p. 8. After the incident, upon pulling Yazzie's criminal history, it was determined that his license was suspended for two (2) prior DUIs<sup>3</sup> of which Halliday was unaware at the time of the incident. *Id.* at p. 15. Yazzie was charged with Driving Under the Influence of Alcohol with priors, a Third Degree Felony; No Insurance on Motor Vehicle, a Class B Misdemeanor; and Driving on Suspended or Revoked Operator's License, a Class C Misdemeanor. R001-R003.

#### **SUMMARY OF ARGUMENT**

The Fourth Amendment of the United States Constitution and Article I, Section 14 of the Utah Constitution both

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<sup>3</sup> The *Information* lists the dates for the priors as September 5, 1995, and July 3, 2001 (R0001).

guarantee the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." "An unreasonable traffic stop is an unconstitutional seizure." State v. Bissegger, 2003 UT App 256, 76 P.3d 178; State v. Hansen, 2002 UT 125, ¶ 28, 63 P.3d 650. A stop is constitutionally justified if the officer has reasonable, articulable suspicion that the defendant has been, is, or is about to be engaged in criminal activity. See, UTAH CODE ANN. § 77-7-15; State v. Pena, 869 P.2d 932, 940 (Utah 1994). This Court determines whether sufficient specific and articulable facts exist to establish reasonable suspicion by examining the totality of the facts and circumstances of the case. State v. Tetmyer, 947 P.2d 1157, 1159 (Utah App. 1997) (citations omitted).

The totality of the circumstances in this matter do not establish reasonable suspicion. Halliday relied solely upon Yazzie's prior non-traffic related encounters to mistakenly assume that Yazzie had never obtained a Utah driver's license. Halliday observed no other traffic violations prior to stopping Yazzie. The trial court then erroneously relied upon the after-acquired knowledge regarding Yazzie's suspended driver's license as support for Halliday's "reasonable

suspicion" prior to the stop. The circumstances in this matter do not support a reasonable suspicion for Halliday to have stopped Yazzie. The trial court's denial of the Motion should be reversed and the Judgment overturned in favor of protecting Yazzie's Fourth Amendment right "to be secure ... against unreasonable ... seizures."

### **ARGUMENT**

#### **HALLIDAY'S SUSPICION WAS NOT REASONABLE**

##### **A. The Fourth Amendment and Reasonable Suspicion.**

The Fourth Amendment of the United States Constitution and Article I, Section 14 of the Utah Constitution both guarantee the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The U.S. Supreme Court has held that "stopping an automobile and detaining its occupants constitute[s] a seizure" within the meaning of the Fourth Amendment, "even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979). This Court and the Utah Supreme Court in recent years have both previously held that "[a]n unreasonable traffic stop is

an unconstitutional seizure." State v. Bissegger, 2003 UT App 256, 76 P.3d 178; State v. Hansen, 2002 UT 125, ¶ 28, 63 P.3d 650.

The long-standing authority by which it is determined whether a traffic stop is reasonable was conceived by the U.S. Supreme Court in the landmark case of Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. Ohio 1968). In Terry, the U.S. Supreme Court held as follows:

In justifying particular intrusion, police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion; facts must be judged against objective standard of whether facts available to officer at moment of seizure or search would warrant man of reasonable caution in belief that action taken was appropriate.

392 U.S. at 21; 88 S.Ct. at 1880. The U.S. Supreme Court noted that "[t]his demand for specificity in the information upon which police action is predicated is the central teaching of [its] Fourth Amendment jurisprudence." *Id.* at fn. 18 (citations omitted). The U.S. Supreme Court went on to explain as follows:

The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.



Terry, 392 U.S. at 21; 88 S.Ct. at 1880. "And in making that assessment it is imperative that the facts be judged against [the] objective standard..." as set forth in Terry. *Id.*; 392 U.S. at 21-22; 88 S.Ct. at 1880 (citations omitted). The U.S. Supreme Court explained further that "[a]nything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." *Id.*; 392 U.S. at 22; 88 S.Ct. at 1880 (citations omitted).

To determine whether a search or seizure is constitutionally reasonable, the Utah Supreme Court has adopted a dual inquiry from Terry: (1) Was the police officer's action justified at its inception? and (2) Was the resulting detention reasonably related in scope to the circumstances that justified the interference in the first place? State v. Lopez, 873 P.2d 1127, 1131-1132 (Utah 1994) *citing Terry*, 392 U.S. at 19-20; 88 S.Ct. at 1879. Appellant challenges only the constitutionality of the initial stop on appeal in the instant matter so an analysis of the second portion of the dual inquiry is unnecessary. See, State v. Tetmyer, 947 P.2d 1157, 1159 (Utah App. 1997).

A stop is constitutionally justified if the officer has reasonable, articulable suspicion that the defendant has been, is, or is about to be engaged in criminal activity. See, UTAH CODE ANN. § 77-7-15; State v. Pena, 869 P.2d 932, 940 (Utah 1994). Therefore, the issue herein is whether, based on the facts of the case, Halliday's initial stop of Yazzie was supported by reasonable, articulable suspicion. This Court determines whether sufficient specific and articulable facts exist to establish reasonable suspicion by examining the totality of the facts and circumstances of the case. State v. Tetmyer, 947 P.2d 1157, 1159 (Utah App. 1997), citing State v. Case, 884 P.2d 1274, 1276 (Utah App. 1994) (citing Terry, 392 U.S. at 21; 88 S.Ct. at 1880; U.S. v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989); accord State v. Bello, 871 P.2d 584, 587 (Utah App. 1994)).

**B. The Facts and Circumstances of the Case.**

Halliday has known Yazzie through law enforcement for more than twenty (20) years and has had several prior non-traffic, but alcohol-related encounters with Yazzie--i.e. public intoxication, disorderly conduct, etc. (R058 at pp. 6, 8, 15). Although none of Halliday's prior encounters with Yazzie were traffic related, as typical procedure Halliday

requested identification from Yazzie during more than ten (10) of these prior encounters. *Id.* at pp. 7 and 16. Halliday himself, however, does not recall if he has ever *specifically* requested a driver's license from Yazzie. *Id.* at p. 17. Halliday claims Yazzie never produced a driver's license as identification during these encounters, even though he did have one. *Id.*

At the time of the incident at issue herein, Halliday had not had any type of encounter with Yazzie for more than one year and had never been involved with a traffic incident pertaining to Yazzie (R058 at pp. 15, 16). Halliday himself stated that he had no reason to believe that Yazzie had not obtained a driver's license since he had last seen him, and that he was not aware of any reason that would preclude Yazzie from doing so. *Id.* at p. 18.

On October 15, 2003, Halliday observed Yazzie driving a vehicle. Because Halliday had never conducted an official inquiry into the matter, he mistakenly believed that Yazzie had never obtained a Utah driver's license. Specifically, Halliday's misguided assumption was based on the fact that (a) Yazzie had never produced a Utah driver's license during the prior non-traffic related encounters and (b) Halliday had

never seen Yazzie driving (R058 at pp. 13, 15). Halliday stated that, upon seeing Yazzie driving, he would have "bet anything [Yazzie] had no license" and "would have gave odds." *Id.* at p. 7.

Upon observing Yazzie driving a vehicle, Halliday did not attempt to contact dispatch to affirm or dispel his mistaken belief. In these circumstances where he believed a driver had no license, his standard practice was to stop a person and check rather than call dispatch. *Id.* at p. 13.

**C. The Facts Do Not Support the Finding That Yazzie Had Not Had a License for a Long Time.**

Based upon the facts articulated above, the trial court found that Halliday had a reasonable suspicion requisite to stop Yazzie (R058 at pp. 29). The findings of the trial court in this matter were only articulated orally and are as follows:

THE COURT: Okay.

Well, the reason why I wished the officer had checked, ah, or watched, until he committed a traffic violation, as he probably would have, is that, ah, I'm gonna deny the motion to suppress. But I think it could be appealed, and I'd just as soon not have this added to my roster of reversals, Court of Appeals. Because I think there's an issue here. It's not a no-brainer. It could have been one, and it isn't.

Ah, the reason that I think that it was reasonable for the officer to stop is that it was such a long time that the defendant had never had a

license. I think it's reasonable to -- to believe he still doesn't have one, and he's driving now.

But there's a fairly strong argument the other way. You know, maybe he decided to go get a license, before he started drivin'. And in fact, he did. In this case it turned out he did. He got it from the wrong agency. It didn't do him any good. It was both wrong, because he wasn't a resident of Arizona, and because his license was -- an even if it was a valid Arizona license, it was useless in Utah, because his privilege to drive in Utah was suspended. But he had -- he had apparently decided he wanted to try to get a license.

But I think it was reasonable for the officer to suspect that he did not have a license, that he was driving based on that long history and the frequent contact.

This is an unusual case. I wouldn't ordinarily permit an officer to stop someone just because once before, somebody didn't have a license. But because of the number of times and the extended period of time, I think it was reasonable for just him just to assume that yeah, he still didn't have a license. So I'm denying the motion to suppress.

*Id.* at pp. 28-29.

The trial court found that it was reasonable for Halliday to stop Yazzie because "...it was such a long time that the defendant had never had a license." (R058 at p. 28). This finding is simply not supported by the testimony offered by Halliday<sup>4</sup>. As testimony reveals, Halliday was under the mistaken assumption when he pulled Yazzie over that Yazzie had

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<sup>4</sup> Halliday was the only witness on either side to provide testimony at the hearing on the Motion (R058 at p. 3).

never obtained a license<sup>5</sup>. Bradford and Halliday both testified at the preliminary hearing and the hearing on the Motion, respectively, that dispatch informed them that Yazzie had obtained a Utah license (R057 at p. 8; R058 at p. 8). The State never offered any evidence as to when Yazzie obtained a Utah license, and Halliday was personally unaware of any of Yazzie's history regarding possible traffic violations (R058 at p. 14).

This finding is erroneously based on Halliday's mistaken assumption that Yazzie never had a license. Halliday had no personal knowledge of such information and testified that he discovered later that he was incorrect in his assumption. The trial court erred in relying upon this misinformation, and erroneously concluded that Halliday had the reasonable suspicion requisite to a constitutional stop.

**D. The Facts Do Not Support a Reasonable Articulable Suspicion.**

There is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." State v.

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<sup>5</sup> Halliday did *not* believe that Yazzie had a suspended or revoked license when he pulled him over. Halliday simply believed that Yazzie had never obtained a Utah license (R058 at p. 13).

Lopez, 873 P.2d 1127, 1133 (Utah 1994) (alterations in original) (quoting Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968); Camara v. Municipal Court, 387 U.S. 523, 534-35, 87 S.Ct. 1727, 1734, 18 L.Ed.2d 930 (1967)); see also 2 Wayne R. LaFave, Search and Seizure § 5.1(h), at 435-36 (1987). In other words, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." State v. Harmon, 910 P.2d 1196 (Utah,1995) citing Delaware v. Prouse, 440 U.S. 648, 654, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979).

- (1) An Individual of Reasonable Caution Would Believe the Actions Taken By Halliday Were Inappropriate.

Facts surrounding a seizure "...must be judged against objective standard of whether facts available to officer at moment of seizure or search would warrant man of reasonable caution in belief that action taken was appropriate." Terry, 392 U.S. at 21; 88 S.Ct. at 1880. "[K]nowledge of a person's prior criminal involvement ... is alone insufficient to give rise to the requisite reasonable suspicion." United States v.

Sandoval, 29 F.3d 537, 542 (10th Cir.1994). The 10<sup>th</sup> Circuit Court of Appeals explained as follows:

If the law were otherwise, any person with any sort of criminal record--or even worse, a person with arrests but no convictions--could be subjected to a Terry-type investigation stop by a law enforcement officer at any time without the need for any other justification at all. Any such rule would clearly run counter to the requirement of a reasonable suspicion, and of the need that such stops be justified in light of a balancing of the competing interests at stake....

Sandoval, 29 F.3d at 543. To allow Halliday's stop of Yazzie to be considered constitutional would run contrary to the requirement of a reasonable suspicion.

Halliday knew Yazzie through non-traffic related encounters. Halliday had asked Yazzie for identification during these encounters, but not specifically a driver's license. Since Yazzie did not produce a Utah driver's license, Halliday at some point incorrectly assumed that Yazzie had never obtained one, even though Yazzie had never indicated as such and *had* actually obtained one.

More than a year passed in which Halliday did not encounter Yazzie or ask for his identification. Then on October 15, 2003, Halliday observed Yazzie driving, at which point Halliday mistakenly believed his unchecked and outdated



assumption to be true to the extent that he did not even radio dispatch to affirm or dispel his assumption before pulling Yazzie over.

To allow these facts to articulate the requisite reasonable suspicion would run contrary to reasonableness itself. For instance, an individual who provides an alternate form of identification to police would be assumed to not have a driver's license and, even a year after the encounter, could be pulled over on suspicion of driving without a license. Another example would be an individual who is cited for driving without a license is pulled over even more than a year later based solely on the assumption that they must not have obtained a license during that year. Neither of these circumstances are "reasonable" and are obviously intrusive of the individual's Fourth Amendment rights, as is the instant case.

Hence the reasoning behind the 10<sup>th</sup> Circuit's determination that prior criminal involvement alone is insufficient to give rise to a reasonable suspicion. Sandoval at 542. Halliday based his suspicion on his prior involvement with Yazzie and the fact that Yazzie never provided him with a Utah driver's license as identification. Just because he never provided Halliday with one did not automatically mean he

did not have one, and surely did not rise to justify pulling Yazzie over if he ever saw him driving a vehicle. Halliday intruded upon Yazzie's constitutionally guaranteed rights based on nothing more substantial than an inarticulate hunch. See, Terry, 392 U.S. at 22; 88 S.Ct. at 1880 (citations omitted).

(2) The Suspended Utah License is Evidence Discovered After the Stop and Cannot Be Considered in a Reasonable Suspicion Analysis.

Reasonable suspicion determinations turn on the facts known to the officer *at the time of the stop*. Lopez at 1138, fn. 6 (emphasis added). Evidence discovered after the stop cannot be considered. *Id.*; see, State v. Baird, 763 P.2d 1214, 1217 (Utah App. 1988). In Lopez, this Court stated that "if the trial court finds no traffic violation, then the stop is not justified at its inception and is therefore unconstitutional." Lopez at 1139.

Prior to the stop, Halliday believed Yazzie did not have a Utah driver's license. Not until after a thorough check with dispatch was it determined that Yazzie's driver's license in Utah was suspended. The fact that Yazzie's license was suspended in Utah was evidence discovered *after* the stop and cannot be considered in the analysis of whether Halliday had a reasonable suspicion. Lopez at 1138.

However, the trial court did erroneously consider the suspension of Yazzie's Utah driver's license in determining whether Halliday had a reasonable suspicion to stop Yazzie. The trial court stated in its findings that Yazzie had attempted to get a license, but "...even if it was a valid Arizona license, it was useless in Utah, because his privilege to drive in Utah was suspended." (R058 at pp. 28-29). Halliday did not have this information available to him to form the requisite reasonable suspicion.

Driving without a Utah license was the alleged violation in support of Halliday's reasonable suspicion to pull Yazzie over. However, the State did not charge Yazzie with this violation, hence the trial court did not have the opportunity to address it. Since Yazzie was not charged with this violation, there were no means of finding that he committed it. Thus, the stop was not justified at its inception and the seizure was unconstitutional. Lopez at 1139.

(3) Reliance Upon Mistaken Information Does Not Support a Reasonable Suspicion.

In State v. Lopez, Officer Hamner testified that while he was working as an undercover narcotics officer, Lopez was "pointed out" to him as Jose Cruz, a known drug dealer. 873 P.2d 1127, 1130 (Utah 1994). A computer check on Jose Cruz showed no driver's license. *Id.* Officer Hamner pulled Lopez

over based on the erroneous information that he was Jose Cruz driving without a license. *Id.* at 1131. Lopez had never represented himself to Officer Hamner as being named or going by the name of Jose Cruz. *Id.* The Supreme Court of Utah determined that it was reasonable to assume from these facts that "...the trial court found no reasonable suspicion to stop Lopez for driving without a license." *Id.*

Similarly here, Halliday relied upon erroneous information pertaining to Yazzie to effectuate the stop at issue. Halliday pulled Yazzie over on the mistaken assumption that he had never obtained a Utah driver's license. It was later found that Yazzie had obtained a Utah driver's license. Halliday did *not* testify that Yazzie ever indicated that he did not have a Utah driver's license, only that he didn't produce one in non-traffic encounters. It is reasonable for this Court to assume from these facts that Halliday relied upon an erroneous assumption and, accordingly, there was no reasonable suspicion for Halliday to pull Yazzie over in his vehicle.

**CONCLUSION**

WHEREFORE, based upon the foregoing, Appellant respectfully requests that this Court reverse the trial court's Judgment and order such other relief as it deems necessary.

DATED this 9th day of September, 2004.

---

William L. Schultz  
Counsel for Appellant

**CERTIFICATE OF MAILING**


I hereby certify that on this 9th day of September, 2004, I mailed, first class postage prepaid, true and correct copies of the foregoing Appellant's Brief to:

J. Frederick Voros, Jr.  
Assistant Attorney General  
160 East 300 South 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, Utah 84114-0854

### CONCLUSION

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DATED this 9th day of September, 2004.

  
\_\_\_\_\_  
William L. Schultz  
Counsel for Appellant

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Salt Lake City, Utah 84114-0854

  
\_\_\_\_\_  


## **Addendum ~A~**

*Judgment and Order of  
Commitment to Utah State Prison,  
dated March 30, 2004*

FILED MAR 30 2004

CLERK OF THE COURT

BY \_\_\_\_\_  
DEPUTY

*SL*

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

STATE OF UTAH,  Plaintiff,  vs.  CLIFTON YAZZIE DOB: 01/29/1961,  Defendant.	<b>JUDGMENT AND ORDER OF COMMITMENT TO UTAH STATE PRISON</b>  Case No. 0317-98  Case Judge: Lyle R. Anderson
---------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------

MARCH 29, 2004

HONORABLE LYLE R. ANDERSON

Plaintiff Attorney: Craig C. Halls

Defendant Attorney: William L. Schultz

This being the day and hour fixed for pronouncing judgment in this case, and the defendant being present in Court and represented by counsel, and defendant having heretofore entered a plea of guilty to the offenses of:

COUNT 1: DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS, a Third Degree Felony; COUNT 2: NO INSURANCE ON MOTOR VEHICLE, a Class B Misdemeanor; and COUNT 3: DRIVING ON SUSPENDED OR REVOKED OPERATOR'S LICENSE, a Class C Misdemeanor; and no legal reason having been shown why judgment of this Court should not be pronounced, it is the judgment and sentence of this court as follows, to wit: that the



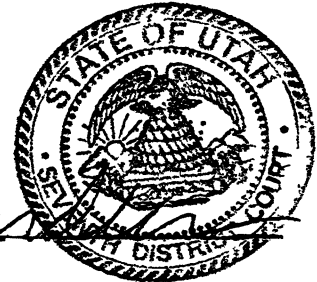
defendant, CLIFTON YAZZIE, be imprisoned in the UTAH STATE PRISON for a term not to exceed FIVE (5) YEARS on Count 1, SIX (6) MONTHS on Count 2 and NINETY (90) DAYS on Count 3, to be served concurrently.

Defendant is also ordered to pay \$250 restitution to San Juan County for the Public Defender's Fund.

Defendant is hereby remanded to the custody of the San Juan County Sheriff or other proper officer to be transported to the Utah State Prison.

DATED this 30<sup>th</sup> day of March, 2004.

*Lyle R. Anderson*  
Lyle R. Anderson  
District Court Judge



*Craig C. Halls*  
Craig C. Halls  
San Juan County Attorney

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of March, 2004, I mailed, postage prepaid, a true and correct copy of the foregoing JUDGEMENT AND ORDER OF COMMITMENT to William L. Schultz, Attorney for defendant, PO Box 937, Moab, UT 84532; Adult Probation Department at 1165 South Highway 191 #3, Moab, UT 84532; and to the Department of Corrections, P.O. Box 250, Draper, UT 84020.

*Shelly Ketter*  
Shelly Ketter  
clerk

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Craig C. Halls  
San Juan County Attorney

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IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

CLIFTON YAZZIE  
DOB: 01/29/1961,

Defendant.

**JUDGMENT AND ORDER  
OF COMMITMENT TO  
UTAH STATE PRISON**

Case No. 0317-98

Case Judge: Lyle R. Anderson

MARCH 29, 2004

HONORABLE LYLE R. ANDERSON

Plaintiff Attorney: Craig C. Halls

Defendant Attorney: William L. Schultz

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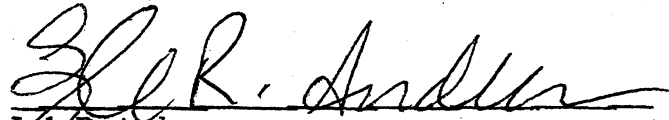
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